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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,539	02/06/2004	Jason Tatge	00013-003CP1	6495
38662 7590 12/19/2007 LAW OFFICES OF GRADY L. WHITE, LLC 10605 Concord Street , SUITE 440 Kensington, MD 20895			EXAMINER DUNHAM, JASON B	
			ART UNIT 3625	PAPER NUMBER
			MAIL DATE 12/19/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/773,539	Applicant(s) TATGE ET AL.	
	Examiner Jason B. Dunham	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,7-17 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,7-17 and 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 14, 2007 has been entered. Applicant amended independent claims 1, 16, and 24. Claims 1-3, 7-17, and 20-24 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7-17, and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dines (US 2002/0052795, hereafter referred to as Dines) in view of Dines (US 2002/0052826, hereafter referred to as Dines0052826) and further in view of Official Notice.

Referring to claim 1. Dines discloses a computer implemented method for offering an average pricing contract for a commodity, comprising the steps of:

- Specifying a commodity (Dines: abstract);

- Specifying a quantity of the commodity (Dines: abstract);
- Specifying a pricing period (Dines: paragraph 17);
- Specifying days of the week during the pricing period, wherein specifying days of the week includes specifying one or more of a day of the week, and wherein specifying days of the week is separate from specifying the pricing period (Dines0052826: abstract and paragraph 18);
- Specifying pricing points for each of the specified days of the week for pricing the commodity (Dines: paragraphs 18 and 20); and
- Offering to sell the quantity of the commodity at a price to be determined based on current cash market prices for the commodity at the pricing points (Dines: paragraphs 17 and 20);
- Wherein the pricing points are each specified at one of a specific time, an opening trade, and a closing trade (Dines: paragraph 18).

The examiner notes that Dines discloses all of the above including specifying specific pricing periods but does not expressly disclose specifying a day of the week. Dines0052826 discloses establishing the average price on selected dates (paragraph 36). The examiner takes official notice that it is well known in the art to use a calendar to specify a day of the week, such as Monday, Tuesday, etc. when selecting dates, as taught by Dines0052826. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the method of Dines to have included specifying a day of the week, as taught by Dines0052826, in order establish

the average price based on a period agreeable to both parties involved in a transaction (paragraph 36).

Referring to claim 2. The combination of Dines, Dines0052826, and Official Notice further discloses a method wherein the price is an average of the current cash market prices (Dines: paragraph 17).

Referring to claim 3. The combination of Dines, Dines0052826, and Official Notice further discloses a method wherein each of the current cash market prices for the commodity is determined by obtaining a futures prices for the commodity (Dines: paragraph 18); and adjusting the obtained futures price by a specified basis value (Dines: paragraph 18).

Referring to claim 7. The combination of Dines, Dines0052826, and Official Notice further discloses a method including the step of specifying a delivery period (Dines: figure 1 & paragraphs 37 and 59).

Referring to claim 8. The combination of Dines, Dines0052826, and Official Notice further discloses a method including the step of specifying a delivery location (Dines: paragraph 19).

Referring to claim 9. The combination of Dines, Dines0052826, and Official Notice further discloses a method wherein the offering step includes posting the offer via the Internet (Dines: paragraph 48).

Referring to claim 10. The combination of Dines, Dines0052826, and Official Notice further discloses a method including the step of forming a contract by accepting the offer (Dines: paragraphs 6 and 11).

Referring to claim 11. The combination of Dines, Dines0052826, and Official Notice further discloses a method including the step of displaying the progress of delivery of the commodity (Dines: paragraph 51).

Referring to claim 12. The combination of Dines, Dines0052826, and Official Notice further discloses a method including the step of displaying the progress of pricing of the commodity (Dines: abstract).

Referring to claim 13. The combination of Dines, Dines0052826, and Official Notice further discloses a method including the step of displaying final pricing information (Dines: paragraph 59).

Referring to claim 14. The combination of Dines, Dines0052826, and Official Notice further discloses a method including executing the contract at the final price (Dines: figure 1 & paragraphs 57 and 59).

Referring to claim 15. The combination of Dines, Dines0052826, and Official Notice further discloses a method including the step of automatically providing a hedging transaction for the buyer of the commodity (Dines: abstract & paragraphs 31 and 42).

Referring to claims 16-17 and 20-21. Claims 16-17 and 20-21 are rejected under the same rationale set forth above in the rejection of claims 1, 3-4, and 6-8.

Referring to claim 22. The combination of Dines, Dines0052826, and Official Notice further discloses a system wherein the site is a Web site (Dines: paragraph 51).

Referring to claims 23-24. Claims 23-24 are rejected under the same rationale set forth above in the rejection of claims 15 and 1, respectively.

Response to Arguments

Applicant's arguments with respect to the above claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Beurskens (US 2005/0114252) discloses a method and apparatus for pricing a commodity including selecting a time period.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason B. Dunham whose telephone number is 571-272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JBD
Patent Examiner
12/17/07



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